

Rule 26, Ariz. R. Crim. P.

POST-VERDICT PROCEEDINGS – Rule 26.1 – “Judgment,” “sentence,” and “determination of guilt” defined; “conviction” occurs when determination of guilt is made.....Revised 3/2010

Rule 26, Ariz. R. Crim. P., generally governs post-verdict proceedings in courts of record. The Comment to that Rule explains that Rule 26 “is intended to create a comprehensive procedure which will provide the sentencing judge with the information and flexibility necessary for making dispositional decisions which will promote the defendant's rehabilitation and protect the welfare of society.” Rule 26 does not apply to non-record courts. Subsection (d) of Rule 26.1 states, “Rule 26 shall not apply to minor traffic offenses. Rules 26.4, 26.5, 26.6, 26.7, 26.8 and 26.15 shall only apply to the Superior Court.” The Comment to that Rule explains, “Rule 26.1(d) applies the full sentencing procedures and safeguards to the superior court, but not to non-record courts.”

Rule 26.1, Ariz. R. Crim. P., defines the terms “judgment,” “sentence,” and “determination of guilt.” Rule 26.1(a) defines “judgment,” as that term is used in criminal proceedings:

The term judgment means the adjudication of the court based upon the verdict of the jury, upon the plea of the defendant, or upon its own finding following a non-jury trial, that the defendant is guilty or not guilty.

“In criminal proceedings, to avoid delay, judgments are complete when orally pronounced and entered in court minutes; no signed judgment or signed minute entry is needed to support an appeal.” *Sims v. Ryan*, 181 Ariz. 330, 331, 890 P.2d 625, 626 (App. 1995).

Rule 26.1(b), Ariz. R. Crim. P., defines “sentence” as “the pronouncement by the court of the penalty imposed upon the defendant after a judgment of guilty.” The

Comment to that Rule explains that the term “sentence” as used in this rule includes probation, even though under A.R.S. § 13-901¹, imposition of sentence must be suspended when a defendant is placed on probation. “In a criminal action, the sentence is complete and valid when orally pronounced in open court and entered in the minutes without anything further or any written judgment.” *State v. Rosario*, 195 Ariz. 264, 266, ¶¶ 8, 987 P.2d 226, 228 (App. 1999) [internal quotation marks and citations omitted]. “If there is no abuse of discretion, a sentence within statutory limits will not be disturbed on appeal.” *State v. Sproule*, 188 Ariz. 439, 440, 937 P.2d 361, 362 (App. 1996), *citing* *State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985).

Rule 26.1(c) defines “determination of guilt” as “a verdict of guilty by a jury, a finding of guilt by a court following a non-jury trial, or the acceptance by the court of a plea of guilty or no contest.” The Rules of Criminal Procedure do not specifically define “conviction,” but the term “conviction” is used in Arizona to mean “determination of guilt” rather than “judgment.” In *State v. Thompson*, 200 Ariz. 439, 27 P.3d 796 (2001), the Arizona Supreme Court explained, “One is convicted when there has been a determination of guilt by verdict, finding, or the acceptance of a plea. Sentencing is not required.” *Id.* at 440, ¶ 4, 27 P.3d at 797 [internal citations omitted].

In *State v. Green*, 174 Ariz. 586, 852 P.2d 401 (1993), Green was on probation for domestic violence under a “deferred prosecution” program. Under that program, the

¹A.R.S. § 13-901(A) provides, in part:

If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place such person on intensive probation supervision pursuant to §13-913 or supervised or unsupervised probation....

trial court could find a defendant guilty of a domestic violence offense and, *without entering a judgment of guilt*, place the defendant on probation. If the defendant successfully completed probation, the court could dismiss the charges. Green committed new offenses while on probation and received enhanced sentences under A.R.S. § 13-604.02(A) because he was on probation when he committed the new offenses. On appeal, Green argued that he was not on “probation for a conviction of a felony offense” because no judgment of guilt had been entered for his domestic violence offense when he committed the new offenses. *Id.* at 587, 852 P.2d at 402. The Arizona Supreme Court stated:

In the popular sense of the term, conviction means that the defendant has been found guilty or has pleaded guilty, although there has been no sentence or judgment by the court. ... We believe that, in the situation at bar, the popular meaning of conviction best meets the legislative purpose behind section 13-604.02(A).

Id. [citations omitted]. Thus, as soon as the jury returns a guilty verdict or the trial court accepts a guilty plea, the defendant has a conviction even though the trial court has not yet pronounced him guilty and he has not yet been sentenced.